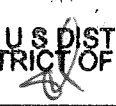



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CLERK U.S. DISTRICT COURT DISTRICT OF ARIZONA	
BY 	DEPUTY

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

United States of America,
Plaintiff,
vs.

Noe Mendoza,
Defendant.

No. CR 21-00808-002-DLR

PLEA AGREEMENT

Plaintiff, United States of America, and the defendant, NOE MENDOZA, hereby agree to dispose of this matter on the following terms and conditions:


1. PLEA

The defendant will plead guilty to Count 4 of the indictment charging the defendant with a violation of 18 United States Code (U.S.C.) § 554(a), Smuggling Goods from the United States, a Class C felony offense.

2. MAXIMUM PENALTIES

a. A violation of 18 U.S.C. § 554(a) is punishable by a maximum fine of \$250,000.00, a maximum term of imprisonment of ten years, or both, and a term of supervised release up to three years. A maximum term of probation is five years, including a minimum term of one year if probation is imposed.

b. According to the Sentencing Guidelines issued pursuant to the Sentencing Reform Act of 1984, the Court shall order the defendant to:


SCANNED

1 (1) make restitution to any victim of the offense pursuant to 18 U.S.C.
2 § 3663 and/or 3663A, unless the Court determines that restitution would not be
3 appropriate;

4 (2) pay a fine pursuant to 18 U.S.C. § 3572, unless the Court finds that a
5 fine is not appropriate;

6 (3) serve a term of supervised release when required by statute or when a
7 sentence of imprisonment of more than one year is imposed (with the understanding that
8 the Court may impose a term of supervised release in all other cases); and

9 (4) pay upon conviction a \$100 special assessment for each count to
10 which the defendant pleads guilty pursuant to 18 U.S.C. § 3013.

11 c. The Court is required to consider the Sentencing Guidelines in determining
12 the defendant's sentence. However, the Sentencing Guidelines are advisory, and the Court
13 is free to exercise its discretion to impose any reasonable sentence up to the maximum set
14 by statute for the crime(s) of conviction, unless there are stipulations to the contrary that
15 the Court accepts.

16 **3. AGREEMENTS REGARDING SENTENCING**

17 a. Stipulation: Sentencing Cap. Pursuant to Fed. R. Crim. P. 11(c)(1)(C), the
18 United States and the defendant stipulate that the defendant's sentence shall not exceed the
19 low end of the applicable sentencing range as calculated under U.S.S.G. § 1B1.1(b).
20 Nothing in this agreement shall preclude the defendant from moving for a downward
21 departure, variance, or sentence below the cap, or the court from imposing a sentence below
22 the cap.

23 b. Restitution. Pursuant to 18 U.S.C. § 3663 and/or 3663A, the defendant
24 specifically agrees to pay full restitution, regardless of the resulting loss amount but in no
25 event more than \$250,000.00, to all victims directly or proximately harmed by the
26 defendant's "relevant conduct," including conduct pertaining to any dismissed counts or
27 uncharged conduct, as defined by U.S.S.G. § 1B1.3, regardless of whether such conduct
28 constitutes an "offense" under 18 U.S.C. §§ 2259, 3663 or 3663A. The defendant

1 understands that such restitution will be included in the Court's Order of Judgment and that
2 an unanticipated restitution amount will not serve as grounds to withdraw the defendant's
3 guilty plea or to withdraw from this plea agreement.

4 c. Assets and Financial Responsibility. The defendant shall make a full
5 accounting of all assets in which the defendant has any legal or equitable interest. The
6 defendant shall not (and shall not aid or abet any other party to) sell, hide, waste, spend, or
7 transfer any such assets or property before sentencing, without the prior approval of the
8 United States (provided, however, that no prior approval will be required for routine, day-
9 to-day expenditures). The defendant also expressly authorizes the United States Attorney's
10 Office to immediately obtain a credit report as to the defendant in order to evaluate the
11 defendant's ability to satisfy any financial obligation imposed by the Court. The defendant
12 also shall make full disclosure of all current and projected assets to the U.S. Probation
13 Office immediately and prior to the termination of the defendant's supervised release or
14 probation, such disclosures to be shared with the U.S. Attorney's Office, including the
15 Financial Litigation Unit, for any purpose. Finally, the defendant shall participate in the
16 Inmate Financial Responsibility Program to fulfill all financial obligations due and owing
17 under this agreement and the law.

18 If the defendant is a member of a Native American tribe that provides "per capita"
19 payments to its members, the defendant agrees that any such "per capita" payment shall be
20 paid over to the Clerk of the Court and applied to the defendant's restitution obligation
21 until restitution to all victims is paid in full.

22 d. Acceptance of Responsibility. If the defendant makes full and complete
23 disclosure to the U.S. Probation Office of the circumstances surrounding the defendant's
24 commission of the offense, and if the defendant demonstrates an acceptance of
25 responsibility for this offense up to and including the time of sentencing, the United States
26 will recommend a two-level reduction in the applicable Sentencing Guidelines offense
27 level pursuant to U.S.S.G. § 3E1.1(a). If the defendant has an offense level of 16 or more,
28

1 the United States will move the Court for an additional one-level reduction in the applicable
2 Sentencing Guidelines offense level pursuant to U.S.S.G. § 3E1.1(b).

3 **4. AGREEMENT TO DISMISS OR NOT TO PROSECUTE**

4 a. Pursuant to Fed. R. Crim. P. 11(c)(1)(A), the United States shall dismiss
5 Count 3 at the time of sentencing.

6 b. This agreement does not, in any manner, restrict the actions of the United
7 States in any other district or bind any other United States Attorney's Office.

8 **5. COURT APPROVAL REQUIRED; REINSTITUTION OF PROSECUTION**

9 a. If the Court, after reviewing this plea agreement, concludes that any
10 provision contained herein is inappropriate, it may reject the plea agreement and give the
11 defendant the opportunity to withdraw the guilty plea in accordance with Fed. R. Crim. P.
12 11(c)(5).

13 b. If the defendant's guilty plea or plea agreement is rejected, withdrawn,
14 vacated, or reversed at any time, this agreement shall be null and void, the United States
15 shall be free to prosecute the defendant for all crimes of which it then has knowledge and
16 any charges that have been dismissed because of this plea agreement shall automatically
17 be reinstated. In such event, the defendant waives any and all objections, motions, and
18 defenses based upon the Statute of Limitations, the Speedy Trial Act, or constitutional
19 restrictions in bringing later charges or proceedings. The defendant understands that any
20 statements made at the time of the defendant's change of plea or sentencing may be used
21 against the defendant in any subsequent hearing, trial, or proceeding subject to the
22 limitations of Fed. R. Evid. 410.

23 **6. WAIVER OF DEFENSES AND APPEAL RIGHTS**

24 The defendant waives (1) any and all motions, defenses, probable cause
25 determinations, and objections that the defendant could assert to the indictment or
26 information; and (2) any right to file an appeal, any collateral attack, and any other writ or
27 motion that challenges the conviction, an order of restitution or forfeiture, the entry of
28 judgment against the defendant, or any aspect of the defendant's sentence, including the

1 manner in which the sentence is determined, including but not limited to any appeals under
2 18 U.S.C. § 3742 (sentencing appeals) and motions under 28 U.S.C. §§ 2241 and 2255
3 (habeas petitions), and any right to file a motion for modification of sentence, including
4 under 18 U.S.C. § 3582(c) (except for the right to file a compassionate release motion under
5 18 U.S.C. § 3582(c)(1)(A) and to appeal the denial of such a motion). This waiver shall
6 result in the dismissal of any appeal, collateral attack, or other motion the defendant might
7 file challenging the conviction, order of restitution or forfeiture, or sentence in this case.
8 This waiver shall not be construed to bar an otherwise-preserved claim of ineffective
9 assistance of counsel or of “prosecutorial misconduct” (as that term is defined by Section
10 II.B of Ariz. Ethics Op. 15-01 (2015)).

11 **7. DISCLOSURE OF INFORMATION**

12 a. The United States retains the unrestricted right to provide information and
13 make any and all statements it deems appropriate to the U.S. Probation Office and to the
14 Court in connection with the case.

15 b. Any information, statements, documents, and evidence that the defendant
16 provides to the United States pursuant to this agreement may be used against the defendant
17 at any time.

18 c. The defendant shall cooperate fully with the U.S. Probation Office. Such
19 cooperation shall include providing complete and truthful responses to questions posed by
20 the U.S. Probation Office including, but not limited to, questions relating to:

- 21 (1) criminal convictions, history of drug abuse, and mental illness; and
22 (2) financial information, including present financial assets or liabilities
23 that relate to the ability of the defendant to pay a fine or restitution.

24 **8. FORFEITURE, CIVIL, AND ADMINISTRATIVE PROCEEDINGS**

25 a. Nothing in this agreement shall be construed to protect the defendant from
26 administrative or civil forfeiture proceedings or prohibit the United States from proceeding
27 with and/or initiating an action for civil forfeiture. Pursuant to 18 U.S.C. § 3613, all
28 monetary penalties, including restitution imposed by the Court, shall be due immediately

1 upon judgment, shall be subject to immediate enforcement by the United States, and shall
2 be submitted to the Treasury Offset Program so that any federal payment or transfer of
3 returned property the defendant receives may be offset and applied to federal debts (which
4 offset will not affect the periodic payment schedule). If the Court imposes a schedule of
5 payments, the schedule of payments shall be merely a schedule of minimum payments and
6 shall not be a limitation on the methods available to the United States to enforce the
7 judgment.

8 b. The defendant agrees to forfeit, and hereby forfeits, all interest in any asset
9 that the defendant owns or over which the defendant exercises control, directly or
10 indirectly, as well as any property that is traceable to, derived from, fungible with, or a
11 substitute for property that constitutes the proceeds of the offense(s), or which was used to
12 facilitate the commission of the offense(s), including the following property seized on
13 March 25, 2020:

- 14 (1) 300 Rounds, PMC, .50 caliber ammunition;
- 15 (2) 1 Round, S&B, 9 mm ammunition; and,
- 16 (3) 1 Round, CBC, .45 caliber ammunition.

17 c. The defendant further agrees to waive all interest in any such asset in any
18 administrative or judicial forfeiture proceeding, whether criminal or civil, state or federal.
19 The defendant agrees to consent to the entry of orders of forfeiture for such property and
20 waives the requirements of Federal Rules of Criminal Procedure 32.2 and 43(a) regarding
21 notice of the forfeiture in the charging instrument, announcement of the forfeiture at
22 sentencing, and incorporation of the forfeiture in the judgment. The defendant further
23 understands and agrees that forfeiture of the assets is appropriate and in accordance with
24 the applicable forfeiture statutes, which may include Title 8 U.S.C. § 1324(b), Title 18
25 U.S.C. §§ 924(d), 981, 982 and 2253, Title 21 U.S.C. §§ 853 and 881, and Title 28 U.S.C.
26 § 2461(c).

27 d. Forfeiture of the defendant's assets shall not be treated as satisfaction of any
28 fine, restitution, cost of imprisonment, or any other penalty this court may impose upon the

1 defendant in addition to forfeiture. This agreement does not preclude the United States
2 from instituting any civil or administrative forfeiture proceedings as may be appropriate
3 now or in the future.

4 e. The defendant agrees to waive all constitutional and statutory challenges in
5 any manner (including direct appeal, habeas corpus, double jeopardy or any other means)
6 to any forfeiture imposed as a result of this guilty plea or any pending or completed
7 administrative or civil forfeiture actions, including that the forfeiture constitutes an
8 excessive fine or punishment. The defendant agrees to take all steps as requested by the
9 United States to pass clear title to forfeitable assets to the United States, and to testify
10 truthfully in any judicial forfeiture proceeding. The defendant acknowledges that all
11 property covered by this agreement is subject to forfeiture as proceeds of illegal conduct,
12 property facilitating illegal conduct, and substitute assets for property otherwise subject to
13 forfeiture, and that no other person or entity has a legitimate claim to these items listed.

14 f. The defendant agrees not to file a claim to any of the listed property in any
15 civil proceeding, administrative or judicial, which may be initiated. The defendant further
16 agrees that he/she will not contest civil, administrative or judicial forfeiture of the listed
17 property. The defendant agrees to waive his/her right to notice of any forfeiture proceeding
18 involving this property, and agrees not to file a claim or assist others in filing a claim in
19 that forfeiture proceeding.

20 g. The government reserves its right to proceed against any remaining assets
21 not identified either in this agreement or in any civil actions which are being resolved along
22 with this plea of guilty, including any property in which the defendant has any interest or
23 control, if said assets, real or personal, tangible or intangible were involved in the
24 offense(s).

25 h. The defendant hereby waives, and agrees to hold the government and its
26 agents and employees harmless from any and all claims whatsoever in connection with the
27 seizure, forfeiture, and disposal of the property described above. Without limitation, the
28 defendant understands and agrees that by virtue of this plea of guilty, the defendant will

1 waive any rights or cause of action that the defendant might otherwise have had to claim
2 that he/she is a “substantially prevailing party” for the purpose of recovery of attorney fees
3 and other litigation costs in any related civil forfeiture proceeding pursuant to 28 U.S.C. §
4 2465(b)(1).

5 **9. ELEMENTS**

6 **18 U.S.C. § 554(a) Smuggling Goods from the United States**

7 On or about March 25, 2020, in the District of Arizona:

- 8 1. The defendant knowingly attempted to export from the United States any
9 merchandise, article, or object; and
- 10 2. The exportation of the merchandise, article, or object was contrary to any law
11 or regulation of the United States.
- 12 3. The defendant knew the exportation of the merchandise, article, or object
13 was contrary to any law or regulation of the United States.

14 **10. FACTUAL BASIS**

15 a. The defendant admits that the following facts are true and that if this matter
16 were to proceed to trial the United States could prove the following facts beyond a
17 reasonable doubt:

18 On or about March 25, 2020, the defendant, NOE MENDOZA, and the co-
19 defendant, Marcos Balderas Millan, applied for entry from the Republic of Mexico
20 into the United States at the San Luis Port of Entry in Arizona. They travelled to
21 Sprague Sports, a Federal Firearms Licensee (FFL), in Yuma, Arizona. The
22 defendant, NOE MENDOZA, and the co-defendant, Marcos Balderas Millan,
23 entered Sprague Sports and purchased 300 rounds of .50 caliber ammunition. They
24 exited the store and proceeded to Jones and Jones, another FFL. They entered Jones
25 and Jones and left with no items.

26 Then, the defendant, NOE MENDOZA, and the co-defendant, Marcos
27 Balderas Millan, drove to the desert, exited the vehicle, removed the .50 caliber
28 ammunition from the boxes and hid the ammunition in the floorboard, dash

1 compartment and under the hood of the vehicle. They discarded the boxes as they
2 travelled to the San Luis Port of entry.

3 The defendant, NOE MENDOZA, and the co-defendant, Marcos Balderas
4 Millan, proceeded to enter the Republic of Mexico through the port of entry. While
5 at the port of entry, they were subject to secondary inspection revealing the 300
6 rounds of ammunition hidden in the vehicle.

7 The defendant, NOE MENDOZA, and the co-defendant, Marcos Balderas
8 Millan, knew the exportation of the ammunition was contrary to law. Neither the
9 defendant, NOE MENDOZA, nor the co-defendant, Marcos Balderas Millan, have
10 applied for or possess any exportation licenses.

11 b. The defendant shall swear under oath to the accuracy of this statement and,
12 if the defendant should be called upon to testify about this matter in the future, any
13 intentional material inconsistencies in the defendant's testimony may subject the defendant
14 to additional penalties for perjury or false swearing, which may be enforced by the United
15 States under this agreement.

16 **APPROVAL AND ACCEPTANCE OF THE DEFENDANT**

17 I have read the entire plea agreement with the assistance of my attorney. I
18 understand each of its provisions and I voluntarily agree to it.

19 I have discussed the case and my constitutional and other rights with my attorney.
20 I understand that by entering my plea of guilty I shall waive my rights to plead not guilty,
21 to trial by jury, to confront, cross-examine, and compel the attendance of witnesses, to
22 present evidence in my defense, to remain silent and refuse to be a witness against myself
23 by asserting my privilege against self-incrimination, all with the assistance of counsel, and
24 to be presumed innocent until proven guilty beyond a reasonable doubt.

25 I agree to enter my guilty plea as indicated above on the terms and conditions set
26 forth in this agreement.

27 I have been advised by my attorney of the nature of the charges to which I am
28 entering my guilty plea. I have further been advised by my attorney of the nature and range

1 of the possible sentence and that my ultimate sentence shall be determined by the Court
2 after consideration of the advisory Sentencing Guidelines.

3 My guilty plea is not the result of force, threats, assurances, or promises, other than
4 the promises contained in this agreement. I voluntarily agree to the provisions of this
5 agreement and I agree to be bound according to its provisions.

6 I understand that if I am granted probation or placed on supervised release by the
7 Court, the terms and conditions of such probation/supervised release are subject to
8 modification at any time. I further understand that if I violate any of the conditions of my
9 probation/supervised release, my probation/supervised release may be revoked and upon
10 such revocation, notwithstanding any other provision of this agreement, I may be required
11 to serve a term of imprisonment or my sentence otherwise may be altered.

12 This written plea agreement, and any written addenda filed as attachments to this
13 plea agreement, contain all the terms and conditions of the plea. Any additional
14 agreements, if any such agreements exist, shall be recorded in a separate document and
15 may be filed with the Court under seal; accordingly, additional agreements, if any, may not
16 be in the public record.

17 I further agree that promises, including any predictions as to the Sentencing
18 Guideline range or to any Sentencing Guideline factors that will apply, made by anyone
19 (including my attorney) that are not contained within this written plea agreement, are null
20 and void and have no force and effect.

21 I am satisfied that my defense attorney has represented me in a competent manner.

22 I fully understand the terms and conditions of this plea agreement. I am not now
23 using or under the influence of any drug, medication, liquor, or other intoxicant or
24 depressant that would impair my ability to fully understand the terms and conditions of this
25 plea agreement.

26
27 Date

5/10/2022

Noe, u.
NOE MENDOZA
Defendant

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5/10/2022

Date

APPROVAL OF THE UNITED STATES

5/11/2022

Date

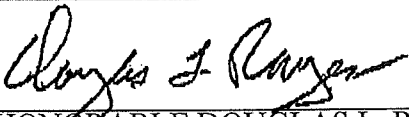
J. Santomé

ADDISON SANTOME
Assistant U.S. Attorney

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ACCEPTANCE BY THE COURT

8/1/2022
Date



HONORABLE DOUGLAS L. RAYES
United States District Judge